IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.4884 OF 2005

M.V.Henry,
Intelligence Officer NCB,
Mumbai ..Applicant

Vs.

Mohammed Shahabuddin Hanif
and Anr. ..Respondents

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Mrs.A.S.Pai counsel for applicant
Mr.Ankush Boraskar i/b Lalla & Lalla for
Respondent No.1
Mr.K.V.Saste A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 9, 2007

P.C.

1. Heard the learned counsel for the applicant-original complainant N.C.B.Mumbai, the learned counsel for the respondent no.1-original accused and the learned A.P.P. for the State.

2. The respondent no.1 was granted bail by order dated 2.5.2005 by the learned Special Judge, Gr.Bombay in N.D.P.S. Special Case No.22 of 2005. Being aggrieved by the order granting bail to the respondent no.1-original accused, this application for cancellation of bail has been preferred.

3. The learned counsel for the N.C.B. Mumbai, has sought cancellation of bail only on the merits of the case and there are no allegations that there is any breach of any of the conditions imposed on the respondent no.1-original accused.

4. Brief facts of the case are as under:

. The accused on 24.12.2004 was to go to Dubai by Oman Airways Flight at 16.30 hrs. alongwith two other persons. At that time, he was found in possession of 7190 ampoules containing ‘Buprenorphine’ which is a psychotropic substance. Hence, the accused came to be arrested on 24.12.2004.

5. The learned counsel for the N.C.B. has pointed out that besides 7190 ampoules which were found in the bag of the applicant, another 1250 ampoules came to be seized from the residence of co-accused i.e. accused no.1. The learned Special Judge has granted bail to the accused on the ground that quantity involved in the said case was of "non-commercial quantity" and hence, the rigours of Section 37 of N.D.P.S. Act would not be attracted.

However, the learned counsel for the N.C.B. has pointed out that the accused was involved in export of these injections not just in this case but he has also been involved in three other such transactions i.e. on 29.9.2004 and 8.10.2004. In these three transactions, large number of ampoules were exported. As far as this aspect is concerned, reliance is placed on the statement of the accused persons wherein it is stated that on earlier occasions also ampoules had been exported. Hence, it is the case of the applicant that the conspiracy is not restricted to the quantity seized in the present case but the quantity in the other transactions would also have to be taken into consideration.

6. The learned counsel for the N.C.B. has placed reliance on the unreported decision of this Court in Criminal Application No.2728 of 2006 (Ezeigwe Sunday John and others Vs. The Intelligence Officer, N.C.B. wherein it is observed that if the person did not have the requisite licence or permit, then the person has committed offence. She has submitted that based on this ground, bail application of the accused in the aforesaid

decision came to be rejected. However, in the aforesaid decision, the quantity of drug involved was commercial quantity, however, in the present case, the quantity is much below the commercial quantity and hence, the said decision would not be applicable to the facts of this case.

7. Admittedly, other than the statements of accused persons, there is nothing on record to show that the accused had earlier exported consignments of such Injections. There is no independent material to show that prior to this incident, the Respondent had exported such consignment. The prosecuting agency in this case i.e. Narcotics Control Bureau has not collected independent evidence showing that this applicant was also involved in other transactions of transportation and export of huge quantity of Buprenorphine injections. It is an admitted fact that commercial quantity of Norphine Injections is 20 gms. and above and the quantity seized in the present case is 12 gms. i.e. much below the commercial quantity.

8. It is well settled that criterion for grant of

bail and the criterion for cancellation of bail is entirely different. As stated earlier, there is no allegation of any breach of any of the conditions imposed on the accused nor is it the case of the N.C.B. that the accused had absconded or would not be available for trial in future. Looking to all the facts of this case, it cannot be said that the order of the learned Sessions Judge is illegal or perverse, hence, I do not think that this is a fit case to cancel the bail.

9. Application is rejected.

[Smt. V.K.Tahilramani, J.]